

**Adoption Level  
November 7, 2001**

TO: Members, State Board of Education

FROM: Vito A. Gagliardi, Sr.  
Commissioner

SUBJECT: Entitlement to Attend School Based on Domicile/Residency in the District  
Proposed Administrative Code  
New Subchapter N.J.A.C. 6A:28-2

REASON  
FOR ACTION: Implementation of N.J.S.A. 18A:38-1

SUNSET DATE OF  
GENERAL CHAPTER: September 10, 2004

PROJECTED  
SUNSET DATE OF  
NEW SUBCHAPTER: September 10, 2004

**Summary**

The Department of Education is proposing to amend N.J.A.C. 6A:28 by adding a new subchapter of administrative code to implement the provisions of N.J.S.A. 18A:38-1, the State statute establishing entitlement to attend the public schools of a district free of charge based on domicile or residency within the district. Upon adoption, the new rules, N.J.A.C. 6A:28-2, will sunset along with the remainder of N.J.A.C. 6A:28 on September 10, 2004.

In accordance with the New Jersey State Constitution, Article VIII, Section IV, Paragraph 1, the Legislature has established a system of free public schools for all children in the State. That system, through N.J.S.A. 18A:38-1, provides for attendance at such public schools based upon domicile, residency or so-called "affidavit student" status (living with and supported by a person other than the parent or guardian for reasons not related to attending school) within a particular school district. Effective January 1994, the Legislature substantially amended N.J.S.A. 18A:38-1 to strengthen the existing criteria for entitlement to attend the schools of a district on an "affidavit student" basis and to provide a new framework for determining student eligibility for attendance in the district. The revised enactment sought to strike a balance between the right of students to a free public education and the need of local districts to ensure that persons attending school within their jurisdictions were, in fact, entitled to do so under the statute. The Legislature accomplished this by providing that students would be able to attend

school in the district where they claimed to be domiciled or otherwise eligible for attendance under the statute, but also permitting a board of education to remove any student it believed to be ineligible following a 21-day period within which the board's determination could be appealed to the Commissioner of Education. Then, if such an appeal were filed, the board could not remove the student from school during the pendency of proceedings before the Commissioner. However, if the petitioner did not prevail on appeal, the Commissioner could assess tuition for the time of the student's ineligible attendance.

In the years since the operative date of the amended statute, experience has shown that regulations are needed to ensure proper implementation of the law. The Department has been made aware, through literally hundreds of county office interventions, contested cases, and telephone and letter inquiries, that many districts do not recognize the right of students to attend school pending local district review of their eligibility and during the subsequent period for appeal to the Commissioner; that unreasonable or inappropriate numbers and forms of documentation are being demanded; that certain considerations, such as immigration or housing status, are improperly entering into district determinations of residency or domicile; and that the notices provided to parents/guardians/residents following local board determinations to deny eligibility are not always sufficiently informative to applicants regarding their rights and responsibilities following such denial. Additionally, numerous other issues and areas of confusion have surfaced. Some of the difficulties inherent in attempting to apply the amended statute without implementing rules have also been recognized by the Appellate Division of the Superior Court, which, in *J.A. v. South Orange and Maplewood Bd. of Ed.*, 318 N.J. Super. 512 (App. Div. 1999), specifically recommended that the Department of Education adopt such rules.

The Department has developed the proposed subchapter of administrative code in response to this need. The proposed rules follow presentation and dissemination of a discussion paper setting forth the anticipated parameters of rules to be developed, and have taken into consideration the comments received in response to that paper, as well as public testimony and comment on the proposed code and comments made by State Board members at three prior levels of discussion. The new subchapter seeks to maintain the balance intended by the statute, deterring attempts to attend school in a particular district where there is no lawful entitlement to do so, while recognizing as paramount a student's right of access to free public education.

The proposed rules address six basic areas:

- *Standards for determining eligibility.* These are needed so that there will be consistency in defining domicile for all students, including those having parents domiciled in different districts; so that inappropriate demands are not made of persons attempting to register "affidavit" students; so that temporary residency is clarified as a basis for attending school in a district; and so that considerations such as housing conditions or immigration/visa status do not enter into entitlement determinations;
- *Acceptable proofs of eligibility.* These are needed so that applicants are afforded a range of possibilities from which to select forms of proof, so that districts do not request documents or information which are protected from disclosure or do not pertain to statutory eligibility requirements for the type of application submitted, and so that districts do not demand a

specific form of proof as an absolute condition of admittance regardless of other proofs presented;

- *Procedures for initial assessment upon presentation of application, and for prompt enrollment or notice of denial of admission.* These are needed so that students are not deprived of education while applications are being more thoroughly assessed, and so that appeals can be expeditiously filed in cases of denial;
- *Written notices of ineligibility.* These are needed so that applicants can understand the specific basis for any adverse decision and be apprised of their rights and responsibilities with respect to continued attendance, appeal and potential liability for tuition, as well as of parent/guardian and district board obligations under the compulsory education law;
- *Procedures for removal of enrolled students.* These are needed so that districts may seek removal of students due to changed circumstances, newly discovered information, more thorough assessment of applications or re-evaluation of status, and so that hearings are conducted before the district board of education prior to a final decision to remove a student if the district's determination of ineligibility is disputed; and
- *Assessment and calculation of tuition.* These are needed so that there will be a uniform method of charging tuition for periods of ineligible attendance and applicants will understand what their obligation may be if students are enrolled in school and later found ineligible by the board or the Commissioner on appeal.

Cross-reference is made to rules, found in N.J.A.C. 6A:3, Controversies and Disputes, for appealing a district board's determination of ineligibility to the Commissioner, and to rules, found in N.J.A.C. 6:5, Provision for the Education of Homeless Children and Youth, implementing the specific paragraph of N.J.S.A. 18A:38-1 dealing with homeless students.

Additionally, reference is made to materials to be provided by the Commissioner of Education to assist school districts and applicants in understanding and effectuating their rights and responsibilities under the law. Items to be provided include model registration forms reflecting the criteria of N.J.S.A. 18A:38-1, sample notices of ineligibility and instructions for filing appeals with the Commissioner.

The following summarizes the content of each section of the proposed subchapter:

## **CHAPTER 28. SCHOOL OPERATIONS**

### **SUBCHAPTER 2. ENTITLEMENT TO ATTEND SCHOOL BASED ON DOMICILE OR RESIDENCY IN DISTRICT**

#### **6A:28-2.1 Purpose and Scope**

This section sets forth the general purpose and scope of the subchapter.

### **6A:28-2.2 Definitions**

This section defines certain terms used throughout the subchapter.

### **6A:28-2.3 Local District Policies**

This section requires each district board of education to adopt written policies incorporating the requirements of the subchapter and make these available to parents and the public.

### **6A:28-2.4 Eligibility to Attend School**

This section establishes who is entitled to attend the schools of a district free of charge. It establishes standards for determining the domicile of students, including emancipated students, students having parents domiciled in different districts and students living in dwellings crossing municipal borders, for purposes of school attendance. It further clarifies requirements for attendance based on “affidavit student” and temporary residency status, and prohibits determinations based on considerations other than actual residence or domicile, such as housing conditions, compliance with terms of lease or immigration/visa status. The section also establishes that no district shall be required to provide transportation for a student residing outside the district for part of the school year, other than that based upon the domicile within the district to the extent required by law.

### **6A:28-2.5 Proof of Eligibility**

This section requires each district board of education to accept the listed forms of evidence from applicants for enrollment and provides that admission or continued attendance may not be conditioned on any one document or subset of documents without regard to other proofs presented. The section further prohibits demand of information or documents that are otherwise protected from disclosure, such as income tax forms or social security numbers, or which pertain to criteria that are not legitimate bases for determining entitlement to attend school, such as housing conditions, immigration/visa status or family/economic hardship in cases other than “affidavit” students.

### **6A:28-2.6 Initial Assessment and Enrollment**

This section requires each district board of education to provide for prompt assessment of applications and admission of students, including use of registration forms supplied by the Commissioner or locally developed forms consistent with them, and availability of trained staff and appropriate forms in sufficient number to ensure expeditious processing of various types of applications.

The section also requires that initial determinations of eligibility be made at the time of application, subject to more thorough review later, and that enrollment take place promptly in all cases except clear, uncontested denials. Where denial is uncontested, district

staff are required to make contact with the school district of actual domicile or residence, or with an appropriate social service agency, to facilitate enforcement of compulsory education laws.

Finally, the section clarifies that absence of student medical information, educational information, prior records or a birth certificate may not serve as a basis on which to deny enrollment or continued attendance. It further clarifies that a student's provisional enrollment or attendance may not be conditioned on advance payment of tuition in whole or part.

#### **6A:28-2.7 Notice of Ineligibility**

This section establishes requirements for the form and content of the notice provided to an applicant who is found ineligible to attend the schools of the district. Requirements are established in the areas of language, statement of basis for determination, identification of missing documents or information, right of appeal to the Commissioner, entitlement to attend school during the period in which an appeal can be filed and during the pendency of any such appeal, removal of enrolled students where no appeal is filed by the end of the statutory appeal period, assessment of tuition at a specified rate for any period of ineligible attendance if no appeal is filed or an appeal is abandoned or decided in favor of the district, and compliance with compulsory education laws. The section also provides for sample notices to be prepared and made available by the Commissioner, and for the district to identify a contact person within the district who can provide assistance to the applicant in explaining the contents of the notice.

#### **6A:28-2.8 Removal of Currently Enrolled Students**

This section clarifies that district boards of education may seek to identify, through further investigation or periodic requests for current validation of previously determined eligibility status, students enrolled in the district who may be ineligible for continued attendance due to error in initial assessment, changed circumstances or newly discovered information. It reiterates the statutory scheme providing that when a student, enrolled as eligible or provisionally eligible and attending school in the district, is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board for removal of the student following notice to the parent, guardian, adult student or resident keeping an "affidavit student," and following a hearing before the district board. The section clarifies that such hearings may be conducted, if board policy so permits, by a committee of the board, upon whose recommendation the full board shall act by vote taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq. (Open Public Meetings Act).

#### **6A:28-2.9 Appeal to the Commissioner**

This section provides that a local district determination of ineligibility to attend school may be appealed to the Commissioner and that such appeals shall proceed as set forth in N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 et seq.

## **6A:28-2.10 Assessment and Calculation of Tuition**

This section provides that if no appeal is filed following the district's notice of ineligibility to the applicant, the district board of education may assess tuition for the period of ineligible attendance. The section also provides that, at the conclusion of proceedings on appeal, where the appellant does not sustain the burden of demonstrating entitlement to attend the schools of the district or where the appeal is abandoned, withdrawn or concluded by means other than settlement agreeing to waive or reduce tuition, the Commissioner may assess tuition for the period of a student's ineligible attendance in a district, including the 21-day period for filing of an appeal and the pendency of the hearing and decision on appeal. Additionally, the section clarifies that tuition assessed pursuant to this subchapter is to be calculated on a per student basis, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6:20-3.1(e), and that the individual student's record of daily attendance shall have no impact on calculation of the period of ineligibility. Finally, the section clarifies that equitable considerations may enter into tuition determinations both at the local district level and on appeal.

### **Social Impact**

The proposed rules implement the statutory scheme providing each student access to a thorough and efficient system of public education, while enabling each district board of education to identify, remove and assess tuition for students who are unable to demonstrate entitlement to attend school within the district based on domicile or residency. By clarifying that students are to be admitted upon presentation at school, then later removed if found ineligible (subject to appeal to the Commissioner and continued attendance pending appeal), the rules act to ensure that students are not denied access to public education while they are awaiting registration appointments, their applications are being evaluated or attempts are being made to resolve eligibility questions at the local level. By specifying the range of permissible and impermissible proofs of eligibility, the rules ensure that students are not excluded based on inability to provide certain types of documents, and that information is not required as a condition of admission into school which is not pertinent to statutory eligibility criteria or otherwise protected from disclosure. By specifying the form and content of the notices of ineligibility which districts must provide to applicants, the rules ensure that affected persons will be fully aware of their rights, including appeal and continued provisional attendance, and their responsibilities, including requirements for filing appeals and potential liability for tuition. By establishing uniform standards for determining eligibility and calculating tuition, the rules ensure that all affected parties will have notice of the bases on which applications are judged and assessments determined where necessary.

### **Economic Impact**

The proposed rules may have an economic impact on school districts which previously, in the absence of rules, implemented the operative statute so as to exclude or delay admission to a number of students, or provided little or no information to ineligible applicants on the right and process of appeal. In these cases, costs may increase as a result of increased enrollment and additional litigation arising from appeals and tuition assessments. However, any such costs may be offset by State aid for enrolled students and tuition collected as a result of

assessments against ineligible applicants. The rules impose no economic burden on applicants for school attendance, other than the cost of legal representation should an applicant choose to obtain it in conjunction with hearings before the district board of education or for litigation arising out of a school attendance dispute.

### **Federal Standards Statement**

The proposed rules will not be inconsistent with or exceed the standards of any Federal legislation, since no such legislation addresses the mechanisms prescribed in this chapter.

### **Jobs Impact**

The proposed rules will result in neither generation nor loss of jobs in public school districts or the State.

### **Agriculture Industry Impact**

The proposed rules will have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The proposed rules do not impose recording, record keeping or other compliance requirements on small businesses as defined by N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules impact solely upon New Jersey public schools.

The proposed rules constitute an entirely new subchapter, and no technical amendments to existing rules will be necessary as a result of its adoption.

**Full text** of the proposed rules follows:

## **CHAPTER 28 SCHOOL OPERATIONS**

### **SUBCHAPTER 2: ENTITLEMENT TO ATTEND SCHOOL BASED ON DOMICILE OR RESIDENCY IN DISTRICT**

#### **6A:28-2.1 Purpose and Scope**

The rules in this subchapter have been adopted to implement the provisions of N.J.S.A. 18A:38-1 (a) through (e). Other than by reference to the applicable statutes and rules, the subchapter does not address attendance at school by nonresidents, children of military parents, or persons qualifying under section (f) of N.J.S.A. 18A:38-1, which provides for attendance by homeless students and is implemented through N.J.A.C. 6:5, Provisions for the Education of Homeless Children and Youth.

#### **6A:28-2.2 Definitions**

As used in this subchapter:

“Affidavit student” means a student attending, or seeking to attend, school in a district pursuant to N.J.S.A. 18A:38-1(b); and

“Commissioner” means the Commissioner of Education or his or her designee.

#### **6A:28-2.3 Local District Policies**

(a) Each district board of education shall adopt written policies incorporating the requirements of this subchapter and shall make copies available to parents and the public.

(b) A district board shall construe the provisions of this subchapter liberally so as to effectuate the right of students to a free public education.

#### **6A:28-2.4 Eligibility to Attend School**

(a) A district board of education shall admit to its schools, free of charge, the following persons over five and under twenty years of age:

1. Any student domiciled within the district;

i. A student is domiciled in the district when he or she is living with a parent or legal guardian whose permanent home is located within the district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.



ii. Where a student's parents are domiciled within different districts, and where there is no court order or written agreement between the parents designating the district for school attendance, the student's domicile is the district of the parent with whom the student lives for the majority of the school year, regardless of which parent has legal custody.

(1) Where a student's physical custody is shared on an equal-time, alternating week/month or other similar basis such that the student is not living with one parent for a majority of the school year, and where there is no court order or written agreement between the parents designating the district for school attendance, the student's domicile is the present domicile of the parent with whom the student resided on the last school day prior to October 16 preceding the date of the application.

(A) Where such a student resided with both parents, or with neither parent, on the last school day prior to the preceding October 16, the student's domicile is the domicile of the parent with whom the parents indicate the student will be residing on the last school day prior to the ensuing October 16. Where the parents do not designate, or cannot agree upon, the student's likely residence as of that date, or if on that date the student is not residing with the parent previously indicated, the student shall attend school in the district where the parent with whom the student is actually living as of the last school day prior to October 16 is domiciled.

(B) No district shall be required to provide transportation for a student residing outside the district for part of the school year, other than that based upon the home of the parent domiciled within the district to the extent required by law, as a result of being the district of domicile for school attendance purposes pursuant to the provisions of this subsection.

iii. A student is domiciled in the district when he or she is emancipated from the care and custody of a parent or legal guardian and has independently established a permanent home within the district. A home is permanent when the student intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

iv. A student is domiciled in the district when the student has come from outside the State and is living with a person domiciled in the district who will be applying for legal guardianship of the student upon expiration of the six-month "waiting period" of State residency required pursuant to N.J.S.A. 2A:34-30(e) and N.J.S.A. 2A:34-31. However, any such student may later be subject to removal proceedings if application for legal guardianship is not made within a reasonable period of time following expiration of the mandatory waiting period.

v. A student is domiciled in the district when his or her parent or legal guardian resides within the district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere.

vi. A student is domiciled in the district if the Division of Youth and Family Services in the Department of Human Services is acting as the student's legal guardian and has placed the student in the district.

vii. Where a student's dwelling is located within two or more local school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes shall be that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.

(1) Where property tax is paid in equal amounts to two or more municipalities, and where there is no established assignment for students residing in the affected dwellings, the district of domicile for school attendance purposes shall be determined through assessment of individual proofs as provided pursuant to N.J.A.C. 6A:28-2.5.

2. Any student kept in the home of a person other than the student's parent or legal guardian, where the person is domiciled in the school district and is supporting the student without remuneration as if the student were his or her own child;

i. A student is not eligible to attend school in a district pursuant to this provision unless:

(1) the student's parent or guardian has filed, together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and that the student is not residing with the other person solely for the purpose of receiving a free public education; and

(2) the person keeping the student has filed, if so required by the district board:

(A) a sworn statement that he or she is domiciled within the district, is supporting the child without remuneration and intends to do so for a longer time than the school term, and will assume all personal obligations for the student relative to school requirements; and

(B) a copy of his or her lease if a tenant, or a sworn landlord's statement if residing as a tenant without written lease.

ii. A student shall not be deemed ineligible under this provision because required sworn statement(s) cannot be obtained, where evidence is presented that the underlying requirements of the law are being met notwithstanding the inability of the resident or student to obtain the sworn statement(s).

iii. A student shall not be deemed ineligible under this provision where evidence is presented that the student has no home or possibility of school attendance other than with a non-parent district resident who is acting as the sole caretaker and supporter of the student.

iv. A student shall not be deemed ineligible under this provision solely because a parent or legal guardian provides gifts or limited contributions, financial or otherwise, toward the welfare of the student, provided that the resident keeping the student receives no payment or other remuneration from the parent or guardian for the student's actual housing and support.

(1) Receipt by the resident of social security or other similar benefits on behalf of the student shall not serve as a basis for ineligibility under this provision.

3. Any student kept in the home of a person domiciled in the district, other than the parent or legal guardian, where the parent or legal guardian is a member of the New Jersey National Guard or the reserve component of the United States armed forces and has been ordered into active military service in the United States armed forces in time of war or national emergency;

i. Eligibility under this provision shall cease at the end of the current school year upon the parent or legal guardian's return from active military duty.

4. Any student whose parent or legal guardian temporarily resides within the district, notwithstanding the existence of a domicile elsewhere;

i. Where required by the district board of education, the parent or legal guardian must demonstrate that such temporary residence is not solely for purposes of a student's attending school within the district of temporary residence;

ii. Where one of a student's parents temporarily resides in a district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with the criteria of (a)1ii above. However, no student shall be entitled to attend school based upon a parent's temporary residence in a district unless the parent demonstrates, if so required by the district board, that such temporary residence is not solely for purposes of a student's attending school within the district.

5. Any student whose parent or guardian moves to another district as the result of being homeless, subject to the provisions of N.J.A.C. 6:5, Provisions for the Education of Homeless Children and Youth;

6. Any student placed in the home of a district resident by court order pursuant to N.J.S.A. 18A:38-2;

7. Any student previously residing in the district if the parent or guardian is a member of the New Jersey National Guard or the United States reserves and has been ordered to active service in time of war or national emergency pursuant to N.J.S.A. 18A:38-3(b); and

8. Any student residing on federal property within the State pursuant to N.J.S.A. 18A:38-7.7 et seq.

(b) The physical condition of an applicant's housing, or an applicant's compliance with local housing ordinances or terms of lease shall not affect eligibility to attend school.

(c) Immigration/visa status shall not affect eligibility to attend school. However, the provisions of N.J.S.A. 18A:38-1 shall not apply to students holding or seeking a visa issued specifically for the purpose of limited study on a tuition basis in a United States public secondary school ("F-1 Visa").

(d) Nothing in this subchapter shall be construed to limit the discretion of a district board of education to admit nonresident students, or the ability of a nonresident student to attend school, with or without payment of tuition, with the consent of the district board, pursuant to N.J.S.A. 18A:38-3(a).

#### **6A:28-2.5 Proof of Eligibility**

(a) A district board of education shall accept any of the following forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;

2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

3. Court orders, State agency agreements and other evidence of court or agency placements or directives;

4. Receipts, bills, cancelled checks and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student;

5. Medical reports, counselor or social worker assessments, employment documents, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency;

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, legal guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;

7. Documents pertaining to military status and assignment; and

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

(d) A district board of education shall not require or request any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school. These include:

1. Income tax returns;
2. Documentation or information relating to citizenship or immigration/visa status, except as set forth in N.J.A.C. 6A:28-2.4(c);
3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and
4. Social security numbers.

(e) Documents or information of the type referenced in (d) above, or pertinent parts thereof, may be voluntarily disclosed by the person seeking enrollment. However, the district board of education may not, directly or indirectly, require or request such disclosure as a condition of enrollment.

#### **6A:28-2.6 Initial Assessment and Enrollment**

(a) Each district board of education shall use registration forms provided by the Commissioner, or locally developed forms that:

1. Are consistent with the forms provided by the Commissioner;
2. Do not seek information prohibited by this subchapter or any other provision of statute or rule;
3. Summarize the criteria for attendance set forth in N.J.S.A. 18A:38-1 for applicant reference, and specify the nature and form of any sworn statements to be filed;
4. Clearly state the purpose, in relation to such criteria, for which requested information is being sought; and

5. Provide notice to applicants that any initial determination of eligibility is subject to more thorough review and re-evaluation, and that there is a potential for assessment of tuition in the event that an initially admitted applicant is later found ineligible.

(b) Each district board of education shall ensure that sufficient numbers of registration forms, and sufficient numbers of trained registration staff, are available to ensure prompt determinations of eligibility and enrollment.

1. If the district uses separate forms for “affidavit student” applications, rather than a single form for all types of application for enrollment, such forms shall comply in all respects with the provisions of (a) above. Where such forms are used, the district shall provide them to any person attempting to register a student of whom he or she is not the parent or legal guardian, whether or not they are specifically requested. District boards of education or their agents shall not demand or suggest that legal guardianship or custody must be obtained before enrollment will be considered for a student living with a person other than the parent or legal guardian, nor shall they demand or suggest that “affidavit student” proofs be produced by an applicant seeking to enroll a student of whom the applicant has legal guardianship or custody.

2. A senior administrator shall be available, and clearly identified to applicants, to assist persons who are experiencing difficulties with the enrollment process.

(c) Initial determinations of eligibility shall be made upon presentation of an application for enrollment, and enrollment shall take place immediately in all cases except those of clear, uncontested denials.

1. Where an applicant has provided incomplete, unclear or questionable information, enrollment shall take place immediately, but the applicant shall be placed on notice that removal will result if defects in the application are not corrected, or an appeal is not filed, in accordance with subsequent notice to be provided pursuant to N.J.A.C. 6A:28-2.7.

2. Where an applicant appears ineligible based on information provided in the initial application, a preliminary written notice of ineligibility shall be provided, including an explanation of the right to appeal to the Commissioner, and enrollment shall take place immediately if the applicant clearly indicates disagreement with the district’s determination and an intent to appeal to the Commissioner.

i. A student enrolled pursuant to this provision shall be notified that he or she will be removed, without hearing before the district board of education, if no appeal is filed within the 21-day period established by N.J.S.A. 18A:38-1.

(d) Where enrollment is denied and no intent to appeal is indicated, applicants shall be advised that they must comply with compulsory education laws. In the absence of a written statement from the parent or legal guardian that the student will be attending school in another district, attending a nonpublic school, or receiving instruction elsewhere than at a school, designated staff shall contact the school district of actual domicile or residence, or an appropriate social service agency, with the student’s name, the name(s) of the parent/guardian/resident,

address to the extent known, denial of admission to the district based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere, for purposes of ensuring compliance with such laws.

(e) Where enrollment is denied and an intent to appeal is indicated, or where enrollment is provisional subject to further review or information, enrollment or attendance at school shall not be conditioned on advance payment of tuition in whole or part.

(f) Each district board shall ensure that information suggesting an applicant may be homeless is identified during the registration process, so that, where appropriate, procedures may ensue in accordance with N.J.A.C. 6:5, Provisions for the Education of Homeless Children and Youth.

(g) Enrollment or attendance in the district shall not be denied based upon absence of the certified copy of birth certificate or other proof of a student's identity required within 30 days of initial enrollment pursuant to N.J.S.A. 18A: 36-25.1.

(h) Enrollment in the district shall not be denied based upon absence of student medical information, although actual attendance at school may be deferred as necessitated by compliance with rules regarding immunization of students, N.J.A.C. 8:57-4.1 et seq.

(i) Enrollment in the district, attendance at school, or educational services where attendance in the regular education program appears inappropriate, shall not be denied based upon absence of a student's prior educational record. However, the applicant shall be advised that the initial educational placement of the student may be subject to revision upon receipt of records or further assessment of the student by the district.

#### **6A:28-2.7 Notice of Ineligibility**

(a) Where an applicant is found ineligible to attend the schools of the district pursuant to this subchapter, or the application initially submitted is found to be deficient upon subsequent review or investigation, notice shall immediately be provided to the applicant consistent with sample form(s) to be provided by the Commissioner and meeting the requirements of this section.

1. Notices shall be in writing, in English and in the native language of the applicant, issued by the chief school administrator and directed to the address at which the applicant claims to reside.

(b) Notices of ineligibility shall include:

1. In cases of denial, a clear description of the specific basis on which the determination of ineligibility was made, sufficient to allow the applicant to understand the basis for the decision and determine whether to appeal;

i. Such description shall identify the specific section of N.J.S.A. 18A:38-1 under which the application was decided.

2. In cases of provisional eligibility, a clear description of the missing documents or information that must be provided in order to attain final eligibility status under the applicable provision of N.J.S.A. 18A:38-1;

3. A clear statement of the applicant's right to appeal to the Commissioner within 21 days of the date of the notice, along with an informational document to be provided by the Commissioner describing how to file an appeal;

4. A clear statement that the student is entitled to attend school for the 21-day period during which an appeal can be made to the Commissioner, but that, if missing information is not provided or an appeal is not filed, the student will not be permitted to attend school beyond the 21<sup>st</sup> day following the date of the notice;

5. A clear statement that the student is entitled to continue attending school during the pendency of an appeal to the Commissioner;

6. A clear statement that, if an appeal is filed with the Commissioner and the applicant does not sustain the burden of demonstrating entitlement to attend the schools of the district, or the applicant abandons the appeal through withdrawal, failure to prosecute or any means other than settlement, the applicant may be assessed, by order of the Commissioner enforceable in Superior Court, tuition for any period of ineligible attendance, including the initial 21-day period and the period during which the appeal was pending before the Commissioner;

7. A clear statement of the approximate rate of tuition, pursuant to N.J.A.C. 6A:28-2.10, that an applicant may be assessed for the year at issue if the applicant does not prevail on appeal, or elects not to appeal;

i. If removal is based on the student's having moved from the district, the notice of ineligibility shall also provide information as to whether district policy permits continued attendance, with or without tuition, for students who move from the district during the course of the school year.

8. The name of a contact person in the district who can provide assistance in explaining the contents of the notice; and

9. Notice that, where no appeal is filed, the parent or legal guardian must still comply with compulsory education laws, and that, in the absence of a written statement from the parent or legal guardian that the student will be attending school in another district, attending a nonpublic school, or receiving instruction elsewhere than at a school, district staff shall notify the school district of actual domicile/residence, or an appropriate social service agency, of the student's name, the name(s) of the parent/guardian/resident, address to the extent known, denial of admission to the district based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere, for purposes of facilitating enforcement of the State compulsory education requirement (N.J.S.A. 18A:38-25).



#### **6A:28-2.8 Removal of Currently Enrolled Students**

(a) Nothing in this subchapter shall preclude a district board of education from seeking to identify, through further investigation or periodic requests for current validation of previously determined eligibility status, students enrolled in the district who may be ineligible for continued attendance due to error in initial assessment, changed circumstances or newly discovered information.

(b) When a student, enrolled and attending school in the district, is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board of education for removal of the student.

1. The chief school administrator shall issue a preliminary notice of ineligibility meeting the requirements of N.J.A.C. 6A:28-2.7. However, such notice shall also provide for a hearing before the district board of education prior to a final decision on removal.

(c) No student shall be removed from school unless the parent, legal guardian, adult student or resident keeping an “affidavit student,” as the case may be, has been informed of his or her entitlement to a hearing before the board of education.

(d) Once the hearing is held, or if the parent, legal guardian, adult student or resident keeping an “affidavit student,” as the case may be, does not respond to the chief school administrator’s notice within the designated time frame or appear for hearing, the district board of education shall make a prompt determination of the student’s eligibility or ineligibility and shall immediately provide notice thereof in accordance with the requirements of N.J.A.C. 6A:28-2.7.

(e) Hearings required pursuant to this subchapter may be conducted, if board policy so provides, by a committee of the district board of education which shall then make a recommendation to the full board; however, no student may be removed except by vote of the district board of education taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.

#### **6A:28-2.9 Appeal to the Commissioner**

(a) A local district determination that a student is ineligible to attend the schools of the district may be appealed to the Commissioner by the parent, legal guardian, adult student or resident keeping an “affidavit student,” as the case may be. Such appeals shall proceed in accordance with N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 et seq.

1. Appeals of “affidavit student” eligibility determinations must be filed by the resident keeping the student.

#### **6A:28-2.10 Assessment and Calculation of Tuition**

(a) If no appeal to the Commissioner is filed following notice of a determination of ineligibility, the district board of education may assess tuition for any period of a student's ineligible attendance, including the 21-day period provided by N.J.S.A. 18A:38-1 for appeal to the Commissioner.

(b) If an appeal to the Commissioner is filed, where the appellant does not sustain the burden of demonstrating entitlement to attend the schools of the district, or abandons the appeal through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition, the Commissioner may assess tuition for any period of a student's ineligible attendance in a district, including the 21-day period for filing of an appeal and the period during which the hearing and decision on appeal were pending.

(c) Tuition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6:20-3.1(e). The individual student's record of daily attendance shall not impact on such calculation.

(d) Nothing in this subchapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the district.